

PLANNING AND DEVELOPMENT BOARD MINUTES

January 4, 2010 City Hall, Planning and Development Department Rm 209, 7:30 p.m.
1000 Commonwealth Avenue, Newton, Massachusetts 02459

Full Members Present:

Tabetha McCartney, Chair
Joyce Moss, Vice Chair
Leslie Burg
Doug Sweet
Scott Wolf

Alternate Members Present:

Felix Zemel
Howard Haywood

Staff Present:

Candace Havens, Interim Planning Director
Eve Tapper, Chief Zoning Code Official
Kathleen Cahill, Community Development Senior Planner

Public Present:

William Renke
Phillip Herr
Michael Lepie
Ted Kuklinski

T. McCartney, Chair, called the meeting to order at 7:30 p.m.

Community Development Board

1. Minutes: Approve the minutes of the December 7, 2009 meeting of the Planning and Development Board acting as the Planning Board and Community Development Board.

On request of T. McCartney for a motion to approve the minutes, L. Burg so moved. D. Sweet seconded the motion. The Board voted 5-0-0 to approve the minutes {J. Moss arrived after this vote was taken}.

Planning Board [7:35]

2. Action Item: Presentation of photographs of existing Newton scenic roads and approval of draft Scenic Road regulations.

A presentation was given of the photographs that Scenic Road Subcommittee members had taken of Newton's current scenic roads. During the presentation a discussion took place about the definition of the public right of way in Newton. The public right of way extends from the centerline of the road to the property owner's property line.

L. Burg, the Chair of the Scenic Road Subcommittee, introduced the draft regulations that were written by Eve Tapper with input from the Scenic Roads Subcommittee and Phil Herr. The Board went through the draft regulations section by section. There was a discussion about when the existing scenic roads were established. According to Board Orders, the majority of the roads were designated by the Board of Alderman in 1977, with one in 1973, and one in 1978. J. Moss wondered why the Board had not reviewed any work on the current Scenic Roads in the time she has been on the Board. It is unclear if there have been any violations of the Scenic Road statute or if actions have been taken that required approval under the Scenic Road statute. E. Tapper stated that there are records indicating a couple hearings were held before the Planning and Development Board on Scenic Road issues, but not many because there have not been any road reconstructions. Regardless, it was agreed that it is difficult to oblige residents and City departments to get approval for work that falls within the Scenic Road statute in the absence of local regulations.

New designations of Scenic Roads can be recommended by the Conservation Commission, the Historical Commission or the Planning and Development Board. According to the draft regulations, a public hearing must be held by the Planning Board before the designation request/recommendation is voted on by the Board of Aldermen. Because new Scenic Road designations will affect various departments and parties the draft regulations stipulate that the City Clerk will notify owners of property having frontage along the scenic road, the Newton Department of Public Works, Massachusetts Department of Public Works, and all utility companies or other such parties that have or propose utility installations within such road following the designation of a new Scenic Road.

There was some discussion about whether or not MassHighway should be included in this list. The state statute on scenic roads prohibits a State Road from being designated as a Scenic Road unless the State Road is entirely in the boundary of the municipality. Currently, there are no State Roads that are entirely within the borders of Newton. However, in order to plan for unknown future changes Section 5 Part C of the draft regulations were changed from the Massachusetts Department of Public Works to if applicable contact Massachusetts Department of Transportation. C. Havens suggested that the Board change the definition of trees under Section 6 to read "Trees" shall mean any woody plants that normally grow to mature height greater than 18 feet (18") and trunk diameter base height greater than six inches (6") to reflect the language that is used in Section 10.3 Trees.

D. Sweet wondered which entity granted permission to utility companies to trim trees in Newton (both on and off Scenic Roads). H. Haywood stated that Massachusetts Department of Public Utilities grants the utility companies this power. Mr. Herr stated that the issue of tree trimming by utility companies on Scenic Roads has been the subject of litigation. Municipalities in the state have taken different stances. In Newton the Tree Warden has developed a good working relationship with the utility companies.

It was reiterated that the public right of way is determined from the centerline of the street, and therefore differs from street to street. The draft Scenic Road regulations place the burden of

proof on the property owner to show the tree is on their property if City records state the tree falls within the public right of way.

Section 8.2 states that the Planning Board will give notice of its public hearing by advertising twice in a newspaper of general circulation in the area. S. Wolf wondered if the regulations could state that this notice would be printed in the Newton TAB. Mr. Herr responded that the City has a policy on the publication of notices which is enforced by the Clerks Office. He believes that this policy needs to be amended to include publication in the Newton TAB but right now the draft Scenic Road regulations need to reflect the current City policy.

There was also some discussion about Section 8.5 which states that the Planning Board will make a decision on the request within 21 days of the closing of the public hearing. The general consensus of Board was that this turn around time is quick! Several members were concerned about compensatory action, or the replacement of trees, by a property owner who was granted approval to cut down trees on a Scenic Road. The Planning Board will collaborate with the City Tree Warden to make well thought out decisions on compensatory action on a case-by-case basis. {S. Wolf excused himself from the meeting at 9:00 p.m.}. The Board decided to amend Section 10.2 E to read “Not more than one driveway curb cut serving a single- or two-family dwelling...”

The Board agreed that these new regulations will have an affect on multiple City departments and committees and commissions. It was decided that L. Burg and E. Tapper would send relevant departments, committees, and commissions a copy of the draft regulations in order to obtain feedback and support. L. Burg moved that the Board approve the draft Scenic Road regulations with the recommended changes and the condition that the draft regulations will be subject to relevant City departments’, commissions’, and committees’ approval. E. Tapper listed the changes to the draft regulations made by the Planning Board during the meeting. In summary, these changes included: Section 5 C change “the Massachusetts Department of Public Works” to “contact Massachusetts Department of Transportation if applicable”; amend Section 10.2 E to read driveway curb cut instead of curb cut, amend the definition of trees under Section 6 to read “Trees” shall mean any woody plants that normally grow to mature height greater than 18 feet (18”) and trunk diameter base height greater than six inches (6”) DBH, remove the word driveway in the definition of “Road” so that it reads in part “but not intersecting streets. The right-of-way...” under Section 6; and amend Section 7.1 E to read “As determined by the Planning Board, sufficient evidence has been provided to document that the tree trunks are not within the road right-of-way.” P. Herr suggested that Section 1 include the phrase: “duly adopted by the Newton Planning and Development Board as of _____ 2010.”

Mr. Lepie asked the Board how the public would know the names and locations of Newton’s current Scenic Roads. T. McCartney stated that this information is publicly accessible. Interested residents and other members of the public must take some individual responsibility to decide what is relevant to them and take some action to obtain the necessary information. H. Haywood added that the current Scenic Roads have been established for more than thirty years. Mr. Lepie also stated that he was concerned that the regulations would give the Planning Board the authority to limit the number of curb cuts allowed per house on a Scenic Road. H. Haywood

clarified that a property owner can still put in more than one curb cut per house with the approval of the Planning Board.

City staff and Mr. Herr agreed that additional steps should be taken to make information on the location of Scenic Roads in the City more accessible to residents and all city departments. It was decided that the most current map of Scenic Roads would be uploaded to the City website and that the public notice for the next Planning and Development Board meeting, during which the draft Scenic Road regulations will be discussed, will include a note that the Scenic Road map is available for review in the Planning Department and the Clerk's Office in addition to the website. The Friday Report sent out prior to the next Planning and Development Board meeting, during which the draft Scenic Road regulations will be discussed, will include a list of Newton's current Scenic Roads.

L. Burg made a motion that the Planning Board approve the draft Scenic Road regulations, as amended, with the condition that these draft regulations will be circulated to the Law Department, Director of Planning of Development, Parks and Recreation Commission, Green Decade, Urban Design and Beautification Commission, Local Historic District Commissions, Department of Public Works, Conservation Commission, Newton Conservators, Tree Commission, Tree Conservancy, and Telecommunications Advisory Board for information and feedback prior to the March Planning and Development board meeting at which time a vote of these regulations is anticipated. F. Zemel seconds the motion. T. McCartney announced the discussion period. D. Sweet stated that it is important that these draft regulations are subject to the Law Department's review. Mr. Herr responded that the Law Department is a special case, and their review needs to be more proactively sought. Correspondence to the other departments and the commissions and committees should state that the Planning Board is considering the draft regulations for approval at their March 1, 2010 meeting, and would appreciate any comments on the draft prior to this date. The Planning Board voted 6-0-0 to approve the draft Scenic Road regulations, as amended, with the condition that these draft regulations will be circulated to the mentioned departments, commissions, and committees.

On request from T. McCartney to adjourn the meeting F. Zemel so moved. L. Burg seconds the motion and the Board voted 6-0-0 to adjourn the meeting at 9:45.

Respectfully Submitted,

Amy Yuhasz
Secretary